

REMARKS

This responds to the Office Action mailed on March 9, 2005, and the references cited therewith.

No claims are amended, claims 19 and 20 are canceled, and no claims are added; as a result, claims 1-18 are now pending in this application.

Affirmation of Election

Restriction to one of the following claims was required:

- I. Claims 1-18, drawn to an apparatus, classified in class 182, subclass 3.
- II. Claims 19 and 20, drawn to a method of making a kit, classified in class 182, subclass 151.

As provisionally elected by Applicant's representative, Sherry Schumm, on March 3, 2005, Applicant elects to prosecute the invention of Group I, claims 1-18.

§103 Rejection of the Claims**Response to Rejection of Claims 5-8:**

Claims 5-8 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Hutchinson (U.S. 3,973,643) in view of Jordan (U.S. 5,970,517). Applicant respectfully traverses the rejection. Further, Applicant preserves the right to swear behind Hutchinson and/or Jordan at a later date.

Hutchinson discloses a detachable harness for a garment (e.g., a fireman's coat). (See Fig. 1 and col. 2, lines 25-26). The garment-harness combination includes a coat, which is adapted to be worn by a wearer 12 and supported by the shoulders 13 of the wearer. (See Fig. 1 and col. 2, lines 27-29). The garment-harness combination also includes a loop 16, which may be attached around the torso 14 of the wearer on the inside of the coat, using a D-ring 18 and a snap 20, thus forming a belt. (See Fig. 1 and col. 2, lines 32-45). The loop 16 may be releasably attached to the coat (e.g., using VELCRO). (See Fig. 1 and col. 2, lines 50-54). The harness

includes a groin strap, which is joined to the loop 16, and a fastening arrangement to store the groin strap out of position. (See Fig. 1 and col. 3, lines 16-29).

Jordan discloses a firefighter turnout gear coat 10. Secured within the coat 10 is a harness assembly 16. (See Fig. 1 and col. 3, lines 27-28). The harness assembly 16 includes a harness body 18, a pair of shoulder straps 19, and a support line 20. (See Fig. 1 and col. 3, lines 28-30). Alternatively, a second embodiment includes turnout gear pants 40, within which a similar harness assembly 16' is incorporated. (See Fig. 2 and col. 4, lines 27-52).

Applicant's claims 5-8 include at least the following features:

"A harness comprising:
a waist strap . . .;
two shoulder straps, adapted to enclose shoulders of the wearer; and
a stowable pelvis enclosing assembly . . ."

Traverse: The Office Action did not make a *prima facie* case of obviousness, because the Office Action did not provide a specific reason to support an obviousness rejection.

In order for the Examiner to establish a *prima facie* case of obviousness, three base criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *M.P.E.P.* § 2142 (citing *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir. 1991)).

The requirement that there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings is supported by caselaw. The Examiner must provide a specific reason to support an obvious rejection. *Ex parte Humphreys*, 24 USPQ2d 1255 (B.P.A.I. 1992). Further, the Office Action must provide specific, objective

evidence of record for a finding of a suggestion or motivation to combine reference teachings and must explain the reasoning by which the evidence is deemed to support such a finding. *In re Sang Su Lee*, 277 F.3d 1338, 61 USPQ2d 1430 (Fed. Cir. 2002). Further still, the fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990); MPEP § 2143.01. Further still, the teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991); MPEP § 2143. The Examiner must avoid hindsight. *In re Bond*, 910 F.2d 831, 834, 15 USPQ2d 1566, 1568 (Fed. Cir. 1990).

The Office Action only stated that "It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the harness of Hutchinson to comprise shoulder straps, as taught by Jordan, for enclosing the shoulder of a user." This is a mere conclusory statement of subjective belief. The Office Action did not provide a specific reason why it would have been obvious to combine the references. Further, the Office Action has not provided objective evidence for a suggestion or motivation to combine the references. For these reasons, the Office Action has not made a *prima facie* case for obviousness. If this rejection is repeated, Applicant respectfully requests that the Examiner indicate where, in the references themselves, a suggestion or motivation to combine the references is present.

Based on the above reasoning, Applicant respectfully submits that the rejection of claims 5-8 under 35 U.S.C. § 103(a) has been overcome. Applicant respectfully requests that the Examiner reconsider and withdraw the rejection.

Response to Rejection of Claims 1 and 2:

Claims 1 and 2 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Hutchinson and Jordan, as applied to claim 5 above, and further in view of Colorado (U.S. 6,732,834 B2). Applicant respectfully traverses the rejection. Further, Applicant preserves the right to swear behind Colorado at a later date.

Colorado discloses a combination trucker's belt and extrication harness. (Fig. 1; col. 3, lines 8-12). The apparatus of Colorado may include a back ring 48 for use in securing the lower portion of a self-contained breathing apparatus (SCBA). (Fig. 1; col. 3, lines 49-51)

In contrast to that which is disclosed in Hutchinson, Jordan, Colorado, or their combination, Applicant's claims 1 and 2 include at least the following distinguishing features:

“A self contained breathing apparatus (SCBA) harness comprising:
a mounting assembly, adapted to mount a SCBA air tank to the harness; . . .
a stowable pelvis enclosing assembly, adapted to enclose a pelvis of the wearer, wherein
the stowable pelvis enclosing assembly includes
at least one deployable strap,
an attachment mechanism adapted to connect the at least one deployable
strap to the frontal attachment point, and
a pelvis assembly pouch, adapted to contain the at least one deployable
strap and the attachment mechanism in a stowed state.”

(Claim 1)

“. . . a crotch strap; and

two leg loops, wherein the two leg loops and the crotch strap form a Y shape, and
wherein first ends of the leg loops are adapted to attach to the waist strap.”

(Claim 2)

Traverse: The Office Action did not make a *prima facie* case of obviousness, because 1) the Office Action did not provide a specific reason to support an obviousness rejection; and 2) the prior art references, when combined, do not teach or suggest all of the claim limitations.

The legal basis for this traverse is described above, in conjunction with the response to the rejection of claims 5-8 under 35 U.S.C. § 103(a).

1) The Office Action did not provide a specific reason to support an obviousness rejection

The Office Action only stated that “It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Hutchinson to comprise a mounting assembly, as taught by Colorado, for mounting a SCBA tank.” This is a mere conclusory statement of subjective belief. The Office Action did not provide a specific reason why it would have been obvious to combine the references. Further, the Office Action has not provided objective evidence for a suggestion or motivation to combine the references. For this reason, the Office Action has not made a *prima facie* case for obviousness. If this rejection is repeated, Applicant respectfully requests that the Examiner indicate where, in the references themselves, a suggestion or motivation to combine the references is present.

2) The references, when combined, do not teach or suggest all of the claim limitations.

Neither Hutchinson, Jordan, nor Colorado disclose, suggest or motivate “. . . a mounting assembly, adapted to mount a SCBA air tank to the harness . . .” Colorado merely discloses “a back ring 48 for use in securing the lower portion of a self-contained breathing apparatus (SCBA) . . .” (Fig. 1; col. 3, lines 49-51). A “ring” does not constitute a “mounting assembly.” It would not be possible to mount a SCBA on a ring. Further, none of the references disclose, suggest or motivate the apparatus features specified in claim 2.

Accordingly, the references, when combined, do not teach or suggest all of the claim limitations. For this reason, the Office Action has not made a *prima facie* case for obviousness.

Based on the above reasoning, Applicant respectfully submits that the rejection of claims 1 and 2 under 35 U.S.C. § 103(a) has been overcome. Applicant respectfully requests that the Examiner reconsider and withdraw the rejection.

Claims 16 and 17:

Claims 16 and 17 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Hutchinson in view of Bell (U.S. 4,714,135). Applicant respectfully traverses the rejection. Further, Applicant preserves the right to swear behind Bell at a later date.

Bell discloses a body harness having a belt and a seat strap. (Fig. 5, col. 3, lines 12-17). The body harness includes a rappelling assembly. (Figs. 3 and 4, col. 3, lines 5-11).

In contrast to that which is disclosed in Hutchinson, Jordan, Colorado, or their combination, Applicant's claims 16 and 17 include at least the following distinguishing features:

"A kit comprising:

a stowable pelvis enclosing assembly, adapted to enclose a pelvis of a wearer of a harness that includes a waist strap and two shoulder straps, wherein the stowable pelvis enclosing assembly includes

at least one deployable strap,

an attachment mechanism adapted to connect the at least one

deployable strap to a frontal attachment point of the harness, and

a pelvis assembly pouch, adapted to contain the at least one

deployable strap and the attachment mechanism in a stowed state; and

a stowable rappel line assembly, which includes

a rappel line having a first end and a second end,

a harness attachment mechanism, attached to the first end, wherein the

harness attachment mechanism is further adapted to attach to a

harness attachment point on the harness,

an anchor mechanism, attached to the second end, wherein

the anchor mechanism is adapted to provide an anchor for the stowable

rappelling assembly,

a descender, adapted to attach to the rappel line; and

a rappel line pouch, adapted to contain the rappel line, the descender, and

the anchor mechanism."

(Claim 16)

"... wherein the at least one deployable strap comprises:

a crotch strap; and

two leg loops, wherein the two leg loops and the crotch strap form a Y shape, and wherein first ends of the leg loops are adapted to attach to the waist strap."

(Claim 17)

Traverse: The Office Action did not make a *prima facie* case of obviousness, because 1) the Office Action did not provide a specific reason to support an obviousness rejection; and 2) the prior art references, when combined, do not teach or suggest all of the claim limitations.

The legal basis for this traverse is described above, in conjunction with the response to the rejection of claims 5-8 under 35 U.S.C. § 103(a).

1) The Office Action did not provide a specific reason to support an obviousness rejection

The Office Action only stated that “It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the harness of Hutchinson to comprise a rappelling assembly, as taught by Bell, to enable rappelling by a user.” This is a mere conclusory statement of subjective belief. The Office Action did not provide a specific reason why it would have been obvious to combine the references. Further, the Office Action has not provided objective evidence for a suggestion or motivation to combine the references. For this reason, the Office Action has not made a *prima facie* case for obviousness. If this rejection is repeated, Applicant respectfully requests that the Examiner indicate where, in the references themselves, a suggestion or motivation to combine the references is present.

2) The references, when combined, do not teach or suggest all of the claim limitations.

Neither Hutchinson nor Bell disclose, suggest or motivate “. . . a stowable pelvis enclosing assembly, adapted to enclose a pelvis of a wearer of a harness that includes a waist strap and two shoulder straps . . .” Further, neither of the references disclose, suggest or motivate other features of claim 16 or the apparatus features specified in claim 17.

Accordingly, the references, when combined, do not teach or suggest all of the claim limitations. For this reason, the Office Action has not made a *prima facie* case for obviousness.

Based on the above reasoning, Applicant respectfully submits that the rejection of claims 16 and 17 under 35 U.S.C. § 103(a) has been overcome. Applicant respectfully requests that the Examiner reconsider and withdraw the rejection.

Response to Rejection of Claim 18:

Claim 18 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Hutchinson and Bell, as applied to claim 16 above, and further in view of Colorado as applied above. Applicant respectfully traverses the rejection.

Claim 18 is dependent from independent claim 16. Applicant has addressed the rejection of claim 16, above, citing Hutchinson in view of Bell. Applicant believes that the reasoning, presented above, should persuade the Examiner that claim 16 is allowable over Hutchinson in view of Bell. Applicant believes that this allowability also extends to dependent claim 18.

Further, the Office Action did not make a *prima facie* case of obviousness, because the Office Action did not provide a specific reason to support an obviousness rejection. The legal basis for this traverse is described above, in conjunction with the response to the rejection of claims 5-8 under 35 U.S.C. § 103(a).

The Office Action did not provide a specific reason why it would have been obvious to combine the references. Further, the Office Action has not provided objective evidence for a suggestion or motivation to combine the references. For this reason, the Office Action has not made a *prima facie* case for obviousness. If this rejection is repeated, Applicant respectfully requests that the Examiner indicate where, in the references themselves, a suggestion or motivation to combine the references is present.

Based on the above reasoning, Applicant respectfully submits that the rejection of claim 18 under 35 U.S.C. § 103(a) has been overcome. Applicant respectfully requests that the Examiner reconsider and withdraw the rejection.

Response to Rejection of Claim 13:

Claim 13 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Bell in view of Jordan. Applicant respectfully traverses the rejection.

Applicant's claim 13 includes at least the following features:

"A harness comprising:
a waist strap, adapted to enclose a waist of a wearer of the harness;
two shoulder straps, adapted to enclose shoulders of the wearer; and

a stowable rappel line assembly, adapted to attach to the waist strap, wherein the stowable rappel line assembly includes

a rappel line having a first end and a second end,

a harness attachment mechanism, attached to the first end, wherein the harness attachment mechanism is further adapted to attach to a harness attachment point on the harness,

an anchor mechanism, attached to the second end, wherein the anchor mechanism is adapted to provide an anchor for the stowable rappelling assembly,

a descender, adapted to attach to the rappel line; and

a rappel line pouch, adapted to contain the rappel line, the descender, and the anchor mechanism.”

(Claim 13)

Traverse: The Office Action did not make a *prima facie* case of obviousness, because the Office Action did not provide a specific reason to support an obviousness rejection.

The legal basis for this traverse is described above, in conjunction with the response to the rejection of claims 5-8 under 35 U.S.C. § 103(a).

The Office Action only stated that “It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the harness of Bell to comprise shoulder straps, as taught by Jordan, for enclosing the shoulder of a user.” This is a mere conclusory statement of subjective belief. The Office Action did not provide a specific reason why it would have been obvious to combine the references. Further, the Office Action has not provided objective evidence for a suggestion or motivation to combine the references. For this reason, the Office Action has not made a *prima facie* case for obviousness. If this rejection is repeated, Applicant respectfully requests that the Examiner indicate where, in the references themselves, a suggestion or motivation to combine the references is present.

Based on the above reasoning, Applicant respectfully submits that the rejection of claim 13 under 35 U.S.C. § 103(a) has been overcome. Applicant respectfully requests that the Examiner reconsider and withdraw the rejection.

Response to Rejection of Claims 3, 4, 10, 11, 14, and 15:

Claims 3, 4, 10, 11, 14, and 15 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Hutchinson and Jordan, as applied to claim 5 above, and further in view of Bell as applied above. Applicant respectfully traverses the rejection.

Claims 3, 4, 10, 11, 14, and 15 depend from claims 1, 5, and 13, respectively. Applicant has addressed the rejection of claims 1, 5, and 13, above, citing Hutchinson and/or Jordan and/or Bell. Applicant believes that the reasoning, presented above, should persuade the Examiner that claims 1, 5, and 13 are allowable over Hutchinson and/or Jordan and/or Bell. Applicant believes that this allowability also extends to dependent claims 3, 4, 10, 11, 14, and 15.

Further, the Office Action did not make a *prima facie* case of obviousness, because the Office Action did not provide a specific reason to support an obviousness rejection. The legal basis for this traverse is described above, in conjunction with the response to the rejection of claims 5-8 under 35 U.S.C. § 103(a).

The Office Action did not provide a specific reason why it would have been obvious to combine the references. Further, the Office Action has not provided objective evidence for a suggestion or motivation to combine the references. For this reason, the Office Action has not made a *prima facie* case for obviousness. If this rejection is repeated, Applicant respectfully requests that the Examiner indicate where, in the references themselves, a suggestion or motivation to combine the references is present.

Based on the above reasoning, Applicant respectfully submits that the rejection of claims 3, 4, 10, 11, 14, and 15 under 35 U.S.C. § 103(a) has been overcome. Applicant respectfully requests that the Examiner reconsider and withdraw the rejection.

Response to Rejection of Claims 12:

Claim 12 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Hutchinson, Jordan and Bell, as applied to claim 10 above, and further in view of Colorado as applied above. Applicant respectfully traverses the rejection.

Claim 12 is dependent from independent claim 5 (with claim 10 intervening). Applicant has addressed the rejection of claim 5, above, citing Hutchinson in view of Jordan, and Applicant

has further addressed the rejection of claim 10, above, citing Hutchinson, Jordan, and Bell. Applicant believes that the reasoning, presented above, should persuade the Examiner that claim 5 is allowable over Hutchinson in view of Jordan, and that claim 10 is allowable over Hutchinson, Jordan, and Bell. Applicant believes that this allowability also extends to dependent claim 12.

Further, the Office Action did not make a *prima facie* case of obviousness, because the Office Action did not provide a specific reason to support an obviousness rejection. The legal basis for this traverse is described above, in conjunction with the response to the rejection of claims 5-8 under 35 U.S.C. § 103(a).

The Office Action did not provide a specific reason why it would have been obvious to combine the references. Further, the Office Action has not provided objective evidence for a suggestion or motivation to combine the references. For this reason, the Office Action has not made a *prima facie* case for obviousness. If this rejection is repeated, Applicant respectfully requests that the Examiner indicate where, in the references themselves, a suggestion or motivation to combine the references is present.

Based on the above reasoning, Applicant respectfully submits that the rejection of claim 12 under 35 U.S.C. § 103(a) has been overcome. Applicant respectfully requests that the Examiner reconsider and withdraw the rejection.

With Respect to Claim 9:

In the Office Action Summary, the “Disposition of Claims” indicates that claims 1-18 are rejected. However, the body of the Office Action does not reject claim 9, does not cite any references against claim 9, and does not provide any reason or statutory basis as to why claim 9 is rejected. Thus, with respect to claim 9, the Office Action fails to meet the requirements of at least:

1. 37 CFR § 1.104(a)(2): “The reasons for any adverse action or any objection or requirement will be stated in an Office action and such information or references will be given as may be useful in aiding the applicant.”

2. MPEP § 707.07(d): “Where a claim is refused for any reason relating to the merits thereof it should be ‘rejected’ and the ground of rejection fully and clearly stated.” (emphasis added.)

3. MPEP § 707.07(d): “The examiner should designate the *statutory basis* for any ground of rejection by express reference to a section of 35 U.S.C. in the opening sentence of each ground for rejection.” (emphasis in original.)

Applicant believes that it has overcome the rejections of claims 1-8 and 10-18 under 35 U.S.C. § 103(a). Applicant respectfully requests that the Examiner reconsider and withdraw the rejections, and allow these claims.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (480) 538-1735 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

HOWELL G. RICHARDSON

By his Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.
P.O. Box 2938
Minneapolis, MN 55402
(480) 538-1735

Date 7 June 2005

By


Sherry W. Schumm
Reg. No. 39,422

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 8 day of June, 2005.

KATE GANNON

Name

Kate G
Signature